

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANGELO FERGUSON,

Plaintiff

Case No. 2:21-cv-01075-APG-EJY

ORDER

v.

H.D.S.P.,

Defendant

On June 11, 2021, Magistrate Judge Youchah ordered plaintiff Angelo Ferguson to file a complaint and a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$402 by August 9, 2021. ECF No. 3 at 2. On June 16, 2021, Ferguson filed an incomplete application to proceed *in forma pauperis*. ECF No. 4. The August 9, 2021 deadline has now expired, and Ferguson has not filed a complaint or a fully complete application to proceed *in forma pauperis* or paid the full \$402 filing fee.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for these reasons, I must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 2 disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See*
 3 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*,
 4 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

5 Here, the first two factors (the public's interest in expeditiously resolving this litigation
 6 and my interest in managing the docket) weigh in favor of dismissal. The third factor (risk of
 7 prejudice to the defendants) also weighs in favor of dismissal because a presumption of injury
 8 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
 9 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 10 factor (public policy favoring disposition of cases on their merits) is greatly outweighed by the
 11 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure
 12 to obey an order will result in dismissal satisfies the "consideration of alternatives" requirement.
 13 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. Judge
 14 Youchah's order expressly stated: "IT IS FURTHER ORDERED that, if Ferguson does not file a
 15 complaint and a fully complete application to proceed *in forma pauperis* with all three documents
 16 or pay the full \$402 filing fee for a civil action on or before August 9, 2021, this case will be
 17 subject to dismissal without prejudice for Ferguson to refile the case with the Court, under a new
 18 case number, when Ferguson has all three documents needed to file a complete application to
 19 proceed *in forma pauperis* or pays the the full \$402 filing fee." Thus, Ferguson had adequate
 20 warning that dismissal would result from his noncompliance with Judge Youchah's order.

21 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff
 22 Angelo Ferguson's failure to file a complaint and a fully complete application to proceed *in forma*
 23 *pauperis* or pay the full \$402 filing fee in compliance with this court's order dated June 11, 2021.

24 I FURTHER ORDER that the pending motions (ECF Nos. 4 and 5) are denied as moot.

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1 I FURTHER ORDER the Clerk of Court to close the case and enter judgment accordingly.
2 No other documents may be filed in this case.

3 DATED: August 16, 2021.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

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